

**STATE OF INDIANA – COUNTY OF MORGAN
IN THE MORGAN CIRCUIT AND SUPERIOR COURTS**

*Notice of Proposed Amendment to Local Rules
Of Practice and Procedure
January 1, 2008*

In accordance with the authority granted under the Rule 81(A) of the Indiana Rules of Trial Procedure, the Morgan Circuit and Superior Courts hereby give notice to the Bar and the Public that the Courts propose to **amend the Local Rules of Practice and Procedure, effective on January 1, 2008, or thirty (30) days after approval by the Indiana Supreme Court, if Supreme Court Approval is required.** In accordance with Trial Rule 81(D), the Courts find that there is good cause to deviate from the schedule established by the Division of State Court Administration.

The following amendments are proposed:

1. **Deletion** of Appendix 1: General Order Establishing Bail Procedure (issued July 1, 2006); **Amendment** of LR55-CR00-1.1 (Bail Procedure), -1.2 (Bail Schedule), and **addition of new rule** LR55-CR00-1.4 (Cash Bond Agreement Form).
2. **Amendment** of LR55-PR-00-10: Guardianships to add rule 10.1 (Filing), and renumbering of remaining paragraphs of existing rule.
3. **Amendment** to Table of Contents, re-numbering of appendices, re-pagination of local rules, as required.

In accordance with Trial Rule 81(D), the time period for the Bar and the Public to comment shall **begin on December 1, 2007** and shall **close on December 31, 2007**. The proposed amendment to the rules will be adopted, modified or rejected before January 1, 2008. Any rules requiring Indiana Supreme Court approval will be submitted to the Indiana Supreme Court for review and approval not earlier than January 1, 2008.

Comments by the Bar and the Public should be made in writing and mailed to:

Judge Christopher L. Burnham
Attn: Public Comment on Local Rules
Morgan Superior Court 2
P.O. Box 1556
Martinsville, IN 46151

A paper copy of the proposed amendments to the Local Rules will be made available for viewing in the office of the Clerk of the Morgan County, Courthouse, 10 E. Washington Street, Martinsville, Indiana during normal business hours. **Persons with Internet access may view the proposed Local Rules of Practice and Procedure online at the following websites:**

<http://www.scican.net/~morgansup2/amendments.pdf>

or

<http://www.in.gov/judiciary/morgan/>

Judge Matthew G. Hanson
Morgan Circuit Court

Judge Christopher L. Burnham
Morgan Superior Court 2

Judge G. Thomas Gray
Morgan Superior Court 1

Judge Jane Spencer Craney
Morgan Superior Court 3

~~IN RE: ADMINISTRATIVE ORDERS~~
~~ORDER ESTABLISHING BAIL PROCEDURE FOR CRIMINAL CASES~~
~~FILED IN~~
~~THE MORGAN CIRCUIT AND SUPERIOR COURTS~~
~~(Effective July 1, 2006)~~

LR55-CR00-1____. Bail

1.1 Bail Procedure.

Acting under the authority of I.C. 35-33-8-4, the Courts now issue the following rule
Order relative to bail in criminal cases:

~~The procedure for the setting of Bail for persons arrested without a warrant shall be as set forth in the "General Order Establishing A Bail Schedule for Criminal Cases Filed in the Morgan Circuit and Superior Courts," issued by the Morgan Circuit and Superior Courts. Bail for persons arrested pursuant to an arrest warrant shall be as set by the issuing Court and as stated on the face of the arrest warrant.~~

1.1.1 ~~4.~~ All warrants issued by the Morgan Circuit and Superior Courts shall have the amount of bail endorsed on the warrant. In all other cases, the **Bail Schedule** set forth established in rule LR55-CR-00-1.2, *supra*, by this order, and marked as Attachment 1, shall apply.

1.1.2 ~~2.~~ If the defendant is presently out on bail on a pending criminal case then:

(a) If the new arrest is for a Misdemeanor the amount of bail to be posted shall be double the amount stated in the bail schedule; or,

(b) If the new arrest is for a Felony, the defendant shall not be released on bail by the Sheriff's Department and bail will be determined by the Court at the defendant's first court appearance.

~~1.1.3~~ ~~3.~~ If the defendant is presently on probation or parole, the defendant shall be held without bail until the defendant's court appearance. Bail, if any, will be set by the Court to which the case is assigned.

1.1.4 ~~4.~~ If the Sheriff of Morgan County believes that the bail to be posted in a case should be less than the amount set on the warrant or pursuant to the bail schedule, the Sheriff ~~he~~ may contact the Magistrate for authorization to reduce the bail. If the Magistrate is not available, then the Sheriff may contact the Judge of one of the other courts. Any such request must be made personally by the Sheriff, or, if the Sheriff ~~he~~ is unavailable, by the Sheriff's ~~his~~ Chief Deputy.

1.1.5 ~~5.~~ The Sheriff of Morgan County has the express authority to refuse to release a person on bail pursuant to this order if the Sheriff has specific information sufficient to convince a reasonable man that there is a substantial risk that the defendant will not appear. In those cases, bail will be set by the Court at the defendant's first appearance before the Court.

1.1.6 ~~6.~~ In every case where the defendant is accused of battery, domestic violence, sexual misconduct or child molesting, the defendant shall not be released on bail prior to appearing before the Judge or Magistrate, and the defendant is served with a "no contact order" or protective order by the Court, which shall become a condition of any bail.

1.1.7 ~~7.~~ The Sheriff of Morgan County and/or the Sheriff's ~~his~~ designee shall have the authority to detain a person under the influence of intoxicating liquor or drugs until such time as the defendant ~~he~~ may be safely released without danger to self or himself ~~or~~ others. In no case shall the defendant ~~person~~ be released in less than four hours. The Sheriff may consider:

- (a) Whether the defendant is going to immediately drive a vehicle.
- (b) Whether the defendant is being released to the custody of a parent, a relative or other responsible person.
- (c) The blood alcohol level of the defendant at the time of ~~his~~ arrest.
- (d) Any other factors relevant to whether the defendant can be safely released without danger to self ~~himself~~ or others.

1.1.8 ~~8.~~ If the defendant is arrested for more than one charge, then the bail under this schedule shall be established as follows:

- (a) In all cases where at least one felony is being charged, the bond shall be the aggregate amount of the offenses charged - i.e., if the defendant is charged with Burglary as a Class C Felony and Theft as a Class D Felony, the bail would be a total of \$7,500 surety plus \$800 cash.
- (b) In cases involving misdemeanors only, the bond shall be for the single highest offenses - i.e., if the defendant is charged with a Class A Misdemeanor and a Class B Misdemeanor and a Class C Misdemeanor, bail would be in the amount of \$1,500 surety plus \$550 ~~\$450~~ cash.

1.1.9 ~~9.~~ If the defendant has a prior felony conviction or a prior conviction for the same charge for which the defendant ~~he~~ has been arrested, bail should be double the amount stated in the bail schedule.

1.1.10 ~~40.~~ In all cases where the defendant is released under the provisions of this order, the Morgan County Prosecuting Attorney's Office shall be notified the morning of the next business day by the Morgan County Sheriffs Department that the defendant has been released, the charges the defendant ~~he~~ was arrested for, and the date the defendant ~~he~~ was ordered to appear for the Initial Hearing.

1.1.11 ~~41.~~ This order does not apply to any juvenile offenders.

1.1.12 ~~42.~~ The Morgan Circuit and Superior Courts ~~may~~, under the authority of ~~I.C. 35-33-8-3.2~~ Indiana Code 35-33-7-6 and local rule LR55-CR00-3.5, order that the defendant and each person who makes a cash deposit bail under the Morgan County Bail Schedule on behalf of a defendant, ~~to~~ execute a **Cash Bond Agreement** in the form shown in local rule LR55-CR00-1.4, supra as ~~Attachment 2 of this order~~. The agreement allows the court to retain all or any part of the cash deposit to pay publicly paid costs of representation and fines, court costs, fees and restitution that the Court may order the defendant to pay if the defendant is convicted.

1.1.13 ~~43.~~ Bail may be posted under Indiana Code ~~I.C. 35-33-8-3.2(A), (C) & (E)~~ as follows:

(A) The court will accept only a combination of surety or property plus cash as set out in the attached Morgan County Bail Schedule.

(B) Property bond shall be secured by real estate located in Morgan County where Thirty-three hundredth (0.33) of true tax value less encumbrances is at least the amount of the bond. The owner of the property by I.C. 27-10-2-4 must have lived in Morgan County for one (1) year, be a United States Citizen, at least eighteen (18) years of age, and be related to the defendant within the third degree of affinity.

(C) Surety bond shall be posted by an insurer as defined by and meeting the qualifications of I.C. 27-1-5-1 and bail agent as defined by I.C. 27-10-1-4.

(D) Cash shall be United States currency only.

~~This order is effective July 1, 2006 and supersedes any other previous orders relating to bail issued by the Morgan Circuit and Superior Courts.~~

1.2 Bail Schedule.

The following bail schedule is established for all criminal cases filed in the Morgan Circuit and Superior Courts. See Appendix 1, "General Order Establishing A Bail Schedule for Criminal Cases Filed in the Morgan Circuit and Superior Courts."

~~ATTACHMENT I TO ORDER RE: BAIL PROCEDURE (effective 7-1-2006)~~

**~~BAIL SCHEDULE FOR CRIMINAL CASES FILED IN
FOR THE MORGAN CIRCUIT AND SUPERIOR COURTS
(Effective July 1, 2006)~~**

MURDER	NO BOND
HABITUAL CRIMINAL	BAIL WILL BE DETERMINED BY THE COURT AT THE DEFENDANT'S FIRST COURT APPEARANCE
CLASS A FELONY	\$30,000 SURETY OR PROPERTY PLUS \$2,000 CASH
CLASS B FELONY	\$10,000 SURETY OR PROPERTY PLUS <u>\$600</u> \$500 CASH
CLASS C FELONY	
(a) against persons	\$5,000 SURETY OR PROPERTY PLUS <u>\$600</u> \$300
(b) against property	CASH \$3,000 SURETY OR PROPERTY PLUS <u>\$600</u> \$300 CASH
CLASS D FELONY	
(a) against persons	\$2,500 SURETY OR PROPERTY PLUS <u>\$600</u> \$500
(b) against property	CASH \$2,000 SURETY OR PROPERTY PLUS <u>\$600</u> \$500 CASH
CLASS A MISDEMEANOR	\$1,500 SURETY OR PROPERTY PLUS <u>\$550</u> \$450 CASH
CLASS B MISDEMEANOR	\$1,000 SURETY OR PROPERTY PLUS <u>\$550</u> \$300 CASH
CLASS C MISDEMEANOR [OPERATING WITH .08 A.C.E.]	\$1,500 SURETY OR PROPERTY PLUS <u>\$550</u> \$450 CASH
CLASS C MISDEMEANOR [ALL OTHER C MISDEMEANORS]	<u>\$550</u> \$300 CASH

1.3 Bail Agents.

All commercial bail bonds shall contain the **printed** name, address and phone number of the principal surety and the bail agent.

1.4 Cash Bond Agreement form

The Morgan Circuit and Superior Courts, under the authority Indiana Code 35-33-7-6 and local rule LR55-CR00-3.5, order that the defendant and each person who makes a cash deposit bail under the Morgan County Bail Schedule on behalf of a defendant execute a Cash Bond Agreement in this format:

~~ATTACHMENT 2 TO ORDER RE: BAIL PROCEDURE (effective 7-1-2006)~~

CASH BOND AGREEMENT UNDER – I.C. 35-33-8-3.2

By authority of I.C. 35-33-8-3.2, the Court may take all of the cash bond posted for a person, if convicted, for payment of public defenders, fines, costs, fees and restitution.

****This means you may not get any of your money back if the person is convicted.****

I acknowledge I have read this document. I understand I may not get any of my money back that I post for a cash bond for _____

NAME OF DEFENDANT

Signature of Defendant

SIGNATURE OF PERSON POSTING CASH BOND

PRINTED NAME of Person Posting Cash Bond

DATE: _____

Signature of Witness (Jail Staff)

TO BE FILED IN CASE NUMBER: 55 _____ - _____ - _____ - _____

[NOTE: Jail Staff/Clerk: attach this signed Cash Bond Agreement to the Cash Bond Receipt for filing with the Court receiving the criminal charges]

LR55-PR00-10___: Guardianships

10.1 Filing: A separate file shall be opened for each person that is to be subject to a guardianship. The Court may waive filing fees for the second and subsequent files for related persons upon written request.

~~10.1~~2 In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or evidence shall be presented showing that the incapacitated person is unable to appear.

~~10.2~~ 10.3 The Court will appoint a GAL for all unrepresented adult wards. The attorney for the petitioner shall complete all forms as requested by the GAL, including information sheet and physician's statement.

~~10.43~~ In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person--or such additional evidence as the Court may require--shall be filed or presented.

10.45 Nothing herein shall be deemed as amending, superseding or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America. Every fiduciary and attorney shall comply with such, if applicable.

10.56 Other than for routine matters, the Guardian shall obtain Court approval prior to taking any action on any financial matter pertaining to carrying out the Guardian's duties and responsibilities for the protected person. The Guardian may pay all taxes (Federal, State and Property) and accountant fees without prior approval.

10.67 In all Estate Guardianship orders where an award of over \$10,000.00 is being issued, the order appointing the Guardian shall also order the financial institution where the funds are deposited to place the funds in a restricted account which shall be paid out only upon Court Order.